



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0329]

RIN 1625-AA00

Safety Zones; Marine Events in Captain of the Port Long Island Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary safety zones for two fireworks events and one swim event within the Captain of the Port Long Island Sound Zone. This action is necessary to provide for the safety of life on navigable waters during these events. Entering into, transiting through, remaining, anchoring or mooring within these regulated areas would be prohibited unless authorized by the Captain of the Port Sector Long Island Sound.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until August 30, 2014. For the purposes of enforcement, actual notice will be used from the date the rule was signed, July 31, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0329]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Petty Officer Scott Baumgartner, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468-4559, Scott.A.Baumgartner@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

There are three separate marine events addressed by this

temporary regulation. On May 29, 2014 the Coast Guard published a NPRM entitled "Safety Zones; Marine Events in Captain of the Port Long Island Zone" in the Federal Register (79 FR 30783). No public comments were received on the proposed rule. No public meeting was requested and none was held.

The Village of Saltaire fireworks display and the Riverhead Rocks Triathlon were both held the previous year and had separate safety zones established by a temporary final rule entitled "Special Local Regulations and Safety Zones; Marine Events in Captain of the Port Long Island Sound Zone." This rulemaking was published on July 10, 2013 in the Federal Register (78 FR 41300). The Baker Family Celebration fireworks display is a first time event with no other regulatory history.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. The comment period for the NPRM associated with the Freeport Chamber of Commerce Fireworks Display expired on June 30, 2014. The first event covered by this regulation occurred on August 2, 2014. Thus, there was insufficient time for a 30 day effective period before the need to enforce the earliest of three safety zones established by this rule on August 2, 2014.

Delaying the enforcement of this rule to allow a 30 day effective period will be impractical and contrary to the public

interest because it would inhibit the Coast Guard's ability to fulfill its mission to keep the ports and waterways safe.

B. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

This temporary rule is necessary to promote the safety of life on navigable waterways within the COTP Long Island Sound Zone during these events.

C. Discussion of Comments, Changes and the Final Rule

No comments were received and there has been one change made to the final rule as a result of the sponsor for the Brookhaven Memorial Hospital Fireworks cancelling their event. The proposed safety zone associated with their event is no longer necessary and has been removed from the final rule.

The Coast Guard is establishing three safety zones for two fireworks displays and one swim event to provide for the safety of life on navigable waters during these events. This rule will be effective from 8:30 p.m. on August 2, 2014 to 10:30 p.m. on August 30, 2014.

The events covered by this regulation will be enforced on

the respective dates, times, and locations listed in the table below. If any of the events are cancelled due to inclement weather, then this regulation will be enforced on rain dates listed in the table below.

Fireworks Displays		
1	Village of Saltaire Fireworks	<ul style="list-style-type: none"> • Date: August 2, 2014. • Rain Date: August 30, 2014. • Time: 8:30 p.m. to 10:30 p.m. • Location: All waters of Saltaire Bay near Saltaire, NY within 600 feet of the fireworks barge located in approximate position 40° 38' 37.72"N, 073° 11' 58.52"W (NAD 83).
2	Baker Family Celebration Fireworks	<ul style="list-style-type: none"> • Date: August 16, 2014. • Rain Date: August 17, 2014. • Time: 8:30 p.m. to 10:30 p.m. • Location: All waters of Flanders Bay near Jamesport, NY within 600 feet of the fireworks barge located in approximate position 40° 55' 51.84"N, 072° 35' 07.92"W (NAD 83).
Swim Event		
3	Riverhead Rocks Triathlon	<ul style="list-style-type: none"> • Date: August 3, 2014 • Time: 6:20 a.m. to 8:30 p.m. • Location: All waters of the Peconic River, Riverhead, NY within the area bounded to the west by a line connecting points at 40° 54' 58.09" N 072° 39' 37.56" W on the northern bank and 40° 54' 56.74" N 072° 39' 37.56" W on the southern bank and bounded to the east by a line connecting points at 40° 55' 01.92" N 072° 38' 51.08" W on the northern bank and 40° 54' 59.15" N 072° 38' 51.08" W on the southern bank (NAD 83). All positions are approximate.

This rule prevents vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated areas during the periods of enforcement unless authorized by the COTP or designated representative.

Public notifications will be made to the local maritime community prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rule is not a significant regulatory action because the regulated areas will be of limited duration and cover only a small portion of the

navigable waterways. Furthermore, vessels may transit the navigable waterways outside of the regulated areas. Vessels requiring entry into the regulated areas may be authorized to do so by the COTP or designated representative.

Advanced public notifications will also be made to the local maritime community by the Local Notice to Mariners as well as Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor or moor within the regulated areas during the periods of enforcement from August 2, 2014, to August 30, 2014.

This temporary rule will not have a significant economic impact on a substantial number of small entities for the following reasons: the regulated areas are of short duration, vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as regulated areas, and vessels requiring entry into the regulated areas may be authorized to do so by the COTP Sector Long Island Sound or designated representative. Additionally, before the effective period, public notifications will be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners as well as Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without

jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and

Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a

category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of three safety zones. This rule may be categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-03291 to read as follows:

§165.T01-03291 Safety Zones; Marine Events in Captain of the

Port Long Island Sound Zone.

(a) Regulations. The general regulations contained in §165.23 as well as the following regulations apply to the events listed in the TABLE 1 of this section. These regulations will be enforced for the duration of each event.

(b) Enforcement period. This rule will be enforced on the dates and times listed for each event in TABLE 1 of this section. If the event is delayed by inclement weather, the regulations will be enforced on the rain date indicated in TABLE 1 of this section.

(c) Definitions. The following definitions apply to this section:

(1) Designated representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP), Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official patrol vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) Spectators. Spectators desiring to enter or operate within the regulated areas should contact the COTP or the designated representative via VHF channel 16 or by telephone at (203) 468-4401 to obtain permission to do so. Spectators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP Sector Long Island Sound or the designated on-scene representative.

(e) Enforcement. Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(f) Locations. The regulated area for all fireworks displays listed in the TABLE 1 of this section is that area of navigable waters within a 600 foot radius of the launch platform for each fireworks display. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled "FIREWORKS-STAY AWAY." This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background.

(g) Separation. For the swim event listed in TABLE 1 of this

section, vessels not associated with the event shall maintain a separation of at least 100 yards from the participants.

TABLE 1 to §165.T01-0329

Fireworks Displays	
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Dated: July 31, 2014.

E. J. Cubanski, III
 Captain, U. S. Coast Guard
 Captain of the Port Sector Long Island Sound

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